

Before the
Rural Utilities Service
Washington, D.C. 20250

In the Matter of)
)
Inquiry Concerning Implementation)
of the Launching our Communities')
Access to Local Television Act of 2000)

Joint Comments of the



**NATIONAL
CABLE TELEVISION
COOPERATIVE, INC.**



April 12, 2001

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SUMMARY

[to be added]

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I. INTRODUCTION

ACA and NCTC submit these comments on behalf of a combined membership of more than 1,000 independent cable companies. Together, ACA/NCTC members serve about 12 million subscribers through cable systems located in all 50 states, primarily in smaller markets and rural areas. ACA/NCTC members range from small, family-run cable systems to multiple-system operators focusing on smaller systems and smaller markets. All ACA/NCTC members face the challenges of building, operating and upgrading broadband networks in smaller markets and rural areas. All ACA/NCTC members deliver local television signals to their customers.

ACA/NCTC members share a vital interest in implementation of the Launching our Communities' Access to Local Television Act of 2000 ("Act"). Through innovative solutions to technical and business challenges, ACA/NCTC members are delivering a range of services to smaller markets. The principal service provided by ACA/NCTC

members is cable television service, including local broadcast signals. ACA/NCTC members are also leading the industry in delivering digital television services and broadband internet access to consumers in smaller markets. The Act offers opportunities for ACA/NCTC to obtain lower cost financing to help develop the infrastructure necessary to deliver local broadcast television signals to non-served and underserved markets.

ACA serves as a unified voice for independent cable before Congress and regulatory agencies. With support from NCTC, ACA was actively involved throughout the Act's legislative process. ACA's efforts contributed to a key adjustment to the final version of the Act – technological neutrality.

NCTC serves as the principal purchasing cooperative for independent cable companies. NCTC began in 1984 by negotiating a handful of programming contracts for less than a dozen members. Today, NCTC negotiates volume discounts on more than 90 programming services and hundreds of hardware components for its members. In 2000, purchases through NCTC total more than \$700 million.

Exhibit 1 contains additional background information on ACA and NCTC.

These comments address the following three principal areas of inquiry:

- **Policy considerations.** We describe key policy considerations underlying the Act that should guide promulgation of implementing regulations.
- **The RTV plan.** We outline one potential use of funds guaranteed under the Act through an innovative plan called "RTV," short for Rural Television. The RTV plan can make local television signals widely available to target markets in a way that is cost-effective and technologically neutral. Moreover, unlike current DBS providers, RTV would make local television signals available to all distributors on a nondiscriminatory basis.
- **Use of funds by independent cable companies.** We describe how individual ACA/NCTC members plan to use financing available under the Act to help serve targeted markets.

ACA/NCTC intend the policy considerations and plans discussed below to help guide RUS as it begins to work through the process of developing regulations to implement and administer the Act.

II. POLICY CONSIDERATIONS

In considering the scope and substance of necessary regulations, the purpose and policy goals of the Act provide important guidance. Section 1002 of the Act includes the following statement of purpose:

The purpose of this Act is to facilitate access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations for households located in non-served areas and underserved areas.

This language reflects three key policy goals:

- Technological neutrality
- Wide distribution to target markets
- No barriers to access by smaller entities.

By developing regulations consistent with the stated purpose of the Act and its underlying policy goals, RUS will help maximize the benefits from the Act and minimize unintended consequences that might otherwise result.

A. Implementing regulations must adhere to the principal of technological neutrality.

As provided in Section 1002, Congress intended the Act to facilitate local signal distribution on a technologically neutral basis. This is an extremely important provision of the Act to ACA/NCTC members. With support from NCTC, ACA worked throughout the legislative process to ensure that the Act would not become a boon to other distribution technologies, while excluding independent cable systems from the Act's benefits. In large part due to the efforts of ACA on behalf of independent cable, the Act expressly incorporates the principal of technological neutrality and authorizes loan

guarantees to cable television companies in eligible markets where they are not obligated to construct facilities under current franchises.

Regulations that advance the principal of technological neutrality will encourage competition between distribution technologies. ACA and NCTC's chief concern was that the Act would limit its benefits to direct broadcast satellite distributors -- the main competitors to smaller market cable systems. This would give the two publicly traded DBS companies -- EchoStar and DirecTV -- that already have access to public equity and debt markets, an additional competitive advantage through access to lower cost capital. By maintaining a more level playing field, regulations under the Act will encourage competition for funds by competing technologies, preserving incentives for innovation and efficiency. In addition, the ultimate beneficiary of the "technology neutral" policy of the Act will be consumers, who stand to benefit from multiple providers in the marketplace, rather than a single, chosen technology, which may not be the best solution in all circumstances.

B. Regulations should favor plans that help distribute signals to the widest possible audience.

The Act seeks to facilitate distribution of local television signals to non-served and underserved areas. Historically, the capital-intensive nature of distribution systems -- satellite, cable or wireless -- combined with low customer density resulted in insufficient incentives to invest in distribution systems for these markets. The Act will increase incentives to invest in these markets by lowering the cost of capital.

To maximize the benefits of the Act, the regulations should not restrict applicants to existing distribution methods or business models. The problems of high capital costs and low density will be best addressed through a combination of favorable financing and innovative solutions to serving smaller markets. In some markets, existing independent cable companies or satellite distributors may offer the best solutions.

Still, in many markets, maximizing distribution will likely require innovative distribution methods and business models. The RTV plan discussed below provides an example. Business models involving not-for-profit or cooperative entities, especially those that offer signals to all distribution methods, may offer the best potential for achieving the Act's goals. Implementing regulations should encourage, not foreclose, the formation of consortia, co-operatives, and other business models to address the challenges of smaller markets.

C. The regulations and process should not erect barriers to access by smaller entities.

In many markets, smaller independent cable companies will offer the most efficient means to distribute local television to non-served and underserved markets. But these companies are also the least able to bear the administrative burdens and costs of complex application processes and detailed ongoing compliance obligations. If implementing regulations do not contain appropriate provisions for smaller entities, the regulations themselves will become barriers to entry for the very companies best suited to offer solutions in certain markets.

To avoid this unintended consequence, RUS should consider regulations that encourage this class of applications by smaller cable companies and other smaller entities. Regulations should permit the development of consortium applications, streamlined, short-form procedures for smaller entities and smaller loan amounts, along with appropriate reporting and audit requirements for smaller entities.

Keeping in mind the policy goals of technological neutrality, encouraging the widest possible distribution through innovative distribution methods, and appropriate regulatory relief for smaller entities, we discuss below potential uses of funds guaranteed under the Act by ACA, NCTC and their members.

III. ACA/NCTC PLANS FOR THE PROGRAM

A. The Rural Television Plan or "RTV"

A consortium of ACA and NCTC propose to create a new entity, "RTV," to launch local television signals into markets targeted under the Act. The RTV plan would involve widespread distribution of local broadcast television to non-served and underserved markets using a combination of satellite and cable television technologies.

Key components of the preliminary RTV plan include:

- Formation of RTV as a not-for-profit or cooperative entity with a sole purpose of developing, financing and operating the distribution system.
- RTV would develop, lease or acquire capabilities to transport, uplink, and downlink via satellite local broadcast signals into target markets.
- Unlike current satellite distributors, RTV would make its services

available on a non-discriminatory basis.

- Distributors including cable television operators, wireless distributors and other satellite distributors, could purchase the signals for distribution from RTV. Individual customers could also purchase the service.
- RTV would also develop capacity for high-speed internet access via satellite for smaller markets.

The RTV plan offers tremendous potential as a cost-effective means to distribute local television signals throughout many, if not all, of the markets targeted by the Act.

To assist RUS' analysis of how the RTV plan will advance the Act's purpose and policies, we provide below responses to the six questions posed in the request for public comment.

1. Identify the technologies capable of providing high quality access to local television and the advantages and disadvantages of each.

The RTV plan combines satellite and cable television technologies -- two technologies with proven capabilities of delivering high-quality local television signals in both analog and digital formats.

The advantages of the RTV plan include:

- Wider distribution of television stations serving smaller markets.
- Use of currently available backhaul, uplink, downlink and signal processing technology.
- Nondiscriminatory access to all distributors and customers – a key

advantage over current satellite distribution schemes.

- Lower cost to distributors and consumers through a not-for-profit or cooperative model.

The disadvantages of the RTV plan are those inherent in serving smaller markets – higher costs per potential subscriber compared to more dense markets.

2. What technology or combination of technologies would be the most cost-effective method of delivering local TV signals to the largest number of residences in target markets?

The RTV plan could provide the model for the most efficient means to widely distribute local television signals in rural markets. Nondiscriminatory access to programming at reasonable rates is a critical component of the plan. Cooperation between independent cable, broadcasters and existing direct broadcast satellite distributors will help ensure cost-effective distribution under the RTV plan. On the other hand, strategic behavior by satellite or broadcasters seeking to protect their turf will raise costs of implementation.

3. What is an acceptable minimum quality of service?

For distribution by cable systems, current FCC technical standards would govern the already established acceptable minimum quality of service in the industry.

4. Identify revenues and expenses associated with providing local broadcast signals.

Financial models for the RTV plan are under preliminary development. Key cost variables will be the degree of cooperation by other participants including broadcasters and other satellite distributors.

5. What is the effect of must-carry?

Current satellite must-carry laws and regulations are being challenged in federal court by the satellite industry. The outcome of this challenge will determine what impact, if any, the satellite must-carry laws and regulations will have on the RTV plan.

6. What additional factors should be considered to accomplish the goals of the Act?

The RTV plan highlights three additional factors that RUS will want to consider:

- **Nondiscriminatory access to programming.** For ACA/NCTC, a key component of the RTV plan or any similar plan is nondiscriminatory access to programming. Many current satellite distributors refuse to sell their satellite programming to cable operators. RUS will likely receive proposals by satellite distributors that will decline to commit to nondiscriminatory access. These should be scrutinized with some skepticism in light of the Act's goal to maximize distribution.
- **Cooperative or not-for-profit business models.** The RUS knows the benefits, and even the necessity, of cooperative or not-for-profit business models for delivering utility services to low density markets

areas. The same economic considerations apply in the distribution of local television services.

- **Internet access services.** As mentioned in Section 1004(e)(1)(B) of the Act, considerations for loan authorizations should include the use of distribution facilities to deliver Internet access services to target markets. Broadband Internet access via satellite is an integral component of the RTV plan.

The RTV plan will likely entail significant financing commitments under the Act. ACA/NCTC members are also interested in access to capital under the Act by individual companies or groups of companies for smaller qualifying projects.

B. Use of funds by ACA/NCTC members and groups of members

ACA/NCTC members have identified several types of qualifying projects that would become viable through lower cost financing under the Act. In general terms, these projects would involve the following:

- Extension of existing fiber-optic or coaxial cable facilities into currently non-served and underserved areas.
- Delivery of local television signals and other programming services over the expanded distribution networks.
- Depending on demand and availability of backbone connections, delivery of high-speed Internet access.
- None of the projects would involve areas where the cable operator is obligated to deliver services, as required under Section 1004(i) of the

Act.

In certain markets, extension of existing cable facilities will offer the most viable means to deliver local television signals.

To assist RUS' analysis of how extension of existing cable facilities will advance the Act's purpose and policies, we provide below responses to the six questions posed in the request for public comment.

1. Identify the technologies capable of providing high quality access to local television and the advantages and disadvantages of each.

Extension of cable facilities into target markets would involve existing technology with an established capability to deliver high-quality local television signals in both analog and digital formats.

The advantages of extending cable television facilities include:

- Provides the sole means to deliver local television in certain markets.
- Uses existing technology with predictable capital and operating costs.
- Many markets would involve smaller, locally managed businesses that are typically more responsive to customer service and cost concerns.

The disadvantages of extending cable facilities are those inherent in serving smaller markets with facilities-based networks – higher costs per potential subscriber compared to more dense markets.

2. What technology or combination of technologies would be the most cost-effective method of delivering local TV signals to the largest number of residences in target markets?

In certain markets, extending cable television facilities may offer the only cost-effective means to deliver local television signals. In many of the smaller markets, DBS providers may have no incentive to distribute local broadcast signals because of the limited customer base. Existing cable providers present the only alternative.

3. What is an acceptable minimum quality of service?

For distribution by cable systems, current FCC technical standards would govern the already established acceptable minimum quality of service in the industry.

4. Identify revenues and expenses associated with providing local broadcast signals.

Costs related to the extension of cable systems fall within predictable ranges. Generally, rural cable companies budget between (\$10,000 to \$20,000) per plant mile. Antenna extensions and additional signal processing equipment may also be required.

5. What is the effect of must-carry?

Cable operators will continue to comply with current cable must-carry laws.

6. What additional factors should be considered to accomplish the goals of the Act?

- **Access to capital by smaller entities.** Rural cable companies face the same lack of economies of scale as do rural utilities -- substantial capital investment is required to serve sparsely populated areas. Most

rural cable companies, however, have not benefited from low-cost financing. The Act provides an opportunity for rural cable companies to obtain lower cost financing, expand their network, and deliver local broadcast signals to targeted markets.

- **Internet access services.** As mentioned in Section 1004(e)(1)(B) of the Act, considerations for loan authorizations should include the use of distribution facilities to deliver Internet access services to target markets. Increasingly, rural cable operators are offering this service. If RUS regulations contain appropriate relief for smaller entities, RUS will likely see a number of applications from cable companies that also provide high-speed internet access in smaller markets.

IV. CONCLUSION

ACA/NCTC members serve subscribers primarily in smaller markets and rural areas. As a result, ACA/NCTC recognizes the importance of this Act and the fascinating opportunities it brings to obtain lower cost financing to help develop infrastructure necessary to deliver local broadcast television signals to non-served and underserved markets. ACA/NCTC also recognizes the significant challenge RUS faces in its implementation of the provisions of this Act, and provides assistance with the following recommendations:

Policy Considerations. ACA/NCTC recommends these policy considerations:

- Implementing regulations must adhere to the principal of technological neutrality and not favor one distribution method over another.
- Regulations should favor plans that help distribute signals to the

widest possible audience, regardless of distribution method or business model.

- The regulations and process should not erect barriers to access by smaller entities.

Use of funds by independent cable companies. ACA/NCTC also recommends the following potential uses for funds received under the Act:

- Creation of a new entity, Rural Television Plan or RTV plan, to launch local television signals into markets targeted under the Act; and
- Extension of existing cable facilities.

ACA/NCTC hopes its policy considerations, RTV plan and recommendations for use of funds provides some guidance to RUS as it begins to work through this important process of developing regulations to implement and administer the Act.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By: _____

**NATIONAL CABLE TELEVISION
COOPERATIVE**

By: _____

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Exhibit 1

The American Cable Association (ACA), formerly the Small Cable Business Association, is an association of independent cable television businesses and owners of smaller cable systems that work together to ensure the future competitiveness and viability of their businesses. ACA currently represents approximately 900 businesses that serve more than 7.5 million subscribers. ACA members primarily serve customers in smaller markets and rural areas across the United States where home density is usually no greater than 20 homes per mile. ACA's members range from serving several hundred thousand subscribers to one member serving below 100 subscribers. Currently, the president of ACA is Matthew Polka.

ACA advocates the concerns of smaller, independent cable businesses before Congress, the Federal Communications Commission, and other federal agencies as well as throughout the 50 states. The primary purpose of ACA is to help its members stay competitive through a legislative and regulatory framework that recognizes the unique economic circumstances of independent cable, provides for regulatory and financial parity with potential competitors, and encourages access to financial markets for capital needs. In addition, ACA is also dedicated to educating its members through information seminars, publications and workshops to help them meet the telecommunications needs of their customers and communities into the 21st century.

Independent cable owners formed ACA in May 1993 as a result of the re-regulation of the cable industry in 1992 by Congress. The regulations crippled smaller cable businesses and cut off much-needed sources of capital. Those companies felt their issues were not being addressed in Washington and decided to advocate their concerns on their own. Since then, ACA has been successful in Congress and at the FCC to win significant relief for independent cable businesses in numerous matters and proceedings.



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Exhibit 1 (cont.)

The National Cable Television Cooperative (NCTC) is a not-for-profit, member-operated purchasing organization. NCTC's mission is to reduce the operating costs of its member cable companies. NCTC negotiates and administers master affiliation agreements with cable television programming networks, cable hardware and equipment manufacturers and other service providers on behalf of its member companies. Currently, the president and CEO of NCTC is Mike Pandzik.

Through joint purchasing and negotiation, NCTC functions similar to a multi-system operator (MSO), taking advantage of volume discounts offered by programming networks, hardware manufacturers, and other providers. This results in significant cost savings for members on the purchase of these products and services, and the savings are passed onto their subscribers.

In 1984, NCTC opened its doors with 12 member companies and began helping small and medium sized cable operators. Today, NCTC has more than 1,000 member companies that serve more than 10 million subscribers. NCTC member companies range in size from less than one hundred subscribers to more than one million. NCTC is proud to say that its members operate more than half the franchised cable systems throughout the United States.



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